IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4661 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURENDRASINH KESRISINH RAJ
Versus
STATE OF GUJARAT & OTHERS

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Appearance :
MR AM RAVAL for Petitioner(s) : 1,
MS. FALGUNI PATEL, ASST. GOVERNMENT PLEADER for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 11/09/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the order of punishment, Annexure 'A' to the petition as well as order of revisional authority which is at Annexure 'B' to the petition.

By order dated 28.8.1993, the petitioner was removed from service on the ground of remaining unauthorisedly absent for a long period of time. The aforesaid order was confirmed in appeal by the appellate authority which is at Annexure 'B' as well as order of revisional authority, which is at Annexure 'C'. The petitioner was appointed as an unarmed police constable in the police department. The petitioner was subjected to departmental inquiry on the ground that he remained absent for 29 times, the particulars of which are given in the charge sheet at Annexure 'A' page 11. For the period between August 1981 to April 1982, the petitioner remained absent for a considerable period from time to time. Initially the petitioner was discharged from service by an order dated 12.11.1982 but since the said order was passed without hearing him, the petitioner challenged the same by way of appeal on the ground that without hearing him, order simpliciter discharge could not have been passed against him. The appellate authority by its order dated 28.03.83 directed the disciplinary authority to hear the petitioner and pass appropriate order after holding appropriate inquiry. The petitioner thereafter was subjected to show cause notice on 19.06.83. The said notice was received by him 22.6.83 and he gave reply on 25.06.83. D.S.P. Bharuch came to the conclusion that the petitioner has not given any satisfactory reply to the said show cause notice and he has merely sent certificate of Civil Surgeon for the period between 20.04.82 and 28.04.83. The DSP came to the conclusion that the petitioner had remained absent in an unauthorised manner for a very long period, and accordingly, passed an order of dismissal. The said order was challenged before the appellate authority. The

appellate authority by its order dated 23.3.1984 dismissed the said appeal. The appellate authority also found that the delinquent had already admitted the charges by reply dated 30.10.1982 [page 18 in the complication of this petition]. The appellate authority, Deputy Director General of Police, Vadodara Range has clearly stated in the order that the delinquent has already admitted his guilt in his reply dated 30.10.1982 and has stated that he do not want to proceed with the matter. Under the said circumstances, the appellate authority found that the order of DSP is just and proper. The appellate authority also found that the delinquent himself has admitted guilt and therefore there was no question of holding departmental inquiry. The aforesaid order was confirmed by the revisional authority by its order dated 22.10.1983 which is at Annexure 'C', page 21 of the compilation. The petitioner has challenged the aforesaid orders by way of the present petition.

Learned advocate Mr. Rawal for the petitioner submitted that the order of punishment is contrary to law as no regular departmental inquiry was initiated against the petitioner for which he has relied upon rule 26 of the Bombay Police Act, 1951. As per the said rule, no order for reducing, removing or dismissing a police officer shall be passed without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him except in cases referred to in the provisions (a) to clause (2) of Article 311 of the Constitution. It is therefore submitted by Mr. Rawal that the order is question is bad as no regular departmental inquiry was held against the petitioner.

Ms. Falguni Patel, learned Assistant Government Pleader vehemently submitted that this Court may not substitute its own findings as against the findings recorded by the disciplinary authority.

I do not find any substance in the argument of the learned advocate for the petitioner because assuming that the appellate authority might have in the earlier order observed that opportunity of hearing should have been given to the petitioner by remanding the matter back to the disciplinary authority, that would not mean that the stand taken by the petitioner earlier can be said to have been wiped out completely. The disciplinary authority in terms has found that the petitioner had already admitted his guilt by accepting the charges and after the matter was again sent back by the appellate authority to the disciplinary authority, the petitioner only submitted a medical certificate of a private Doctor for the period between 20.04.82 to 28.04.83. Nowhere he has explained the absence of earlier and subsequent period then the period mentioned in the medical certificate. When the said order of dismissal was challenged, the appellate authority has rightly found that when the petitioner himself has admitted his guilt and has clearly stated that he do not want to proceed further in the inquiry and he is not willing to proceed with the matter, the order of the disciplinary authority cannot be faulted with. The petitioner has not even cared to produce the aforesaid letter dated 30.10.82 which may amount to suppressing material fact. The petitioner who was in the police force, has shown least respect towards his duty, had remained absent very frequently and shown a very casual approach towards employment, cannot make a complaint that punishment is harsh.

The petitioner was serving in the police department, which is a disciplined force and, therefore, discipline in his conduct was imperative. In the case of MITHLESH SINGH vs. UNION OF INDIA reported in AIR 2003 SC 1724, the Supreme Court considered a case where the appellant who was appointed as a constable in Railway Protection Special Force was removed from service for remaining absent for 25 days without leave. The Supreme Court observed that any act of indiscipline of such an employee cannot be lightly taken

and imposition of penalty of removal from service on him for remaining absent from duty without leave cannot be faulted with.

In the case of MAAN SINGH vs. UNION OF INDIA reported in AIR 2003 SC 1800, it was noticed that the appellant remained unauthorisedly absent from duty for more than 2 years continuously without any intimation to the department or submissions of any medical papers in support of his illness. The disciplinary authority held that absence of the appellant from duty was unauthorised and willful and these facts were fully established in the enquiry; that he had absented himself unauthorisedly on 21 different occasions from the date of his enlistment in the department on 10-7-1978; Bearing these facts in mind, the disciplinary authority dismissed the appellant from service by an order made on 13-3-1992. The appellant filed an appeal against the said order of dismissal to the Additional Commissioner of Police, New Delhi range but the same was rejected by an order made on 18-9-1992. Thereafter, the appellant filed an Original Application No. 99/93 on the file of the Central Administrative Tribunal, which also stood, dismissed. The appellant thereafter filed a writ petition in the High Court and the High Court also dismissed the said writ petition. The Supreme Court held that when the case is of habitual absence for long periods on several occasions unauthorisedly, the view taken by the disciplinary authority is justified.

Considering the aforesaid aspect of the matter, in my view, this is not a matter in which this Court, in exercise of its extra-ordinary jurisdiction, would like to interfere with the order of punishment on the ground that the punishment is excessive. Mr. Rawal submitted that the punishment of dismissal is on the higher side. Considering the aforesaid circumstances, I do not find any justification in interfering with the order passed by the disciplinary authority and confirmed by the appellate authority and revisional

authority. The petitioner was serving as a constable in a disciplined force, and he was required to perform his duties diligently but the facts of the case prove otherwise.

In the result, the petition deserves to be dismissed, and is hereby dismissed. Rule is discharged. No order as to costs.

[P. B. MAJMUDAR, J.]

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